IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 90 OF 2005

IN

SUMMARY SUIT NO.3648 OF 2004

Ravinder Singh ... Plaintiff

Vs.

M/s. Universal Medicare Pvt.Ltd. Defendants

Mr. Sunil Purohit i/b. P.D.kadam for the plaintiff.

Mr.C. Kapadia i/b. DSK Legal for the Defendants.

CORAM: S.U.KAMDAR,J.

DATE : 11th October,2005.

P.C.

1. The present suit is filed for recovery ofRs.5,52,000/- covered under three bills. Insofar as the aforesaid claim is concerned, the defence rised is bogus one. The first defence raised is of a delay in delivery. In support thereof, reliance is placed on the purchase order, Exhibit "A" to the plaint, which, inter alia, provides delivery date as 15.2.2002. In paragraph 3 of the plaint, it has been mentioned that delivery is effected from 2.2.2002 to 8.4.2002. It is the case of the defendants that by virtue of delay in

delivery, the plaintiff is not entitled to payment of the aforesaid amount. However, I find that the defence
is bogus because when the delivery of the goods was taken, the defendants were aware that there is delay in delivery. Inspite of that the defendans have accepted the goods. It was open to the defednants to refuse to accept the delivery of the goods. But having taken delivery thereof, it is not open to the defendants now to refuse to make payment of the aforesaid amount.

2. The second defence raised is about quality of goods. By letter dated 19.7.2002, the defendfants furnished to the plaintiff a list of 202 damaged pieces which are found in damaged condition. It is the case of the plainiff that he either repaired or replaced the said 202 pieces and delivered back to the defednants. However, the defendants contend that the said 202 pieces are received, but some of them are repaired which is not acceptable. Even in respect of the aforesaid defence, I find that after receiving 202 pieces duly repaired and replaced, no such claim has been made that the repair is not proper and thus the pieces are liable to be rejected.

3. The learned Counsel appearing for the defendants has drawn my attentiion to the letter dated

13thDecember, 2002. The said letter raised only a defence in respect of delivery of goods. In that view of the matter, I find no substantial defence in the suit. However, with a view to give the defendants an opportunity to defend the suit, I direct the defendants to deposit in this Court a sum of Rs.3,00,000/- (Rupees three lakhs only) within a period of four weeks from today, failing which the plaintiff will be entitled to decree. The amount if so deposited, the Prothoinotary & Senior master is directed to deposit the same in a fixed deposit with any Nationalised Bank initially for a period of one year and renew the same from time to time till further orders from this Court.

4. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit. Affidavits of documents to be filed within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U.KAMDAR,J.)